

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

HARRY McMULLEN,

Petitioner,

v.

**2:07 CV 45
(Maxwell)**

WAYNE A. PHILLIPS,

Respondent.

ORDER

It will be recalled that on June 8, 2007, *pro se* Petitioner Harry McMullen instituted the above-styled civil action by filing an Application for Habeas Corpus pursuant to 28 U.S.C. § 2241.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, Magistrate Judge Seibert issued a Report And Recommendation on June 15, 2008, wherein he recommended that summary dismissal of the Petitioner's § 2241 Petition was warranted because the Petitioner's claim was not ripe for review. Thereafter, by Order entered January 30, 2008, Magistrate Judge Seibert granted a Motion For Reconsideration filed by the Petitioner on October 5, 2007; vacated his June 15, 2008, Report And Recommendation; and directed the Respondent to show cause why the § 2241 Petition should not be granted.

On March 17, 2008, a Motion To Dismiss and Memorandum In Support thereof were filed by the Respondent. Although a *Roseboro* Notice was issued by Magistrate Judge Seibert on March 18, 2008, the Petitioner has filed no response to the

Respondent's Motion To Dismiss.

On April 30, 2008, Magistrate Judge Seibert entered a Report And Recommendation wherein he recommended that the Respondent's Motion To Dismiss be granted and that the Petitioner's § 2241 Petition be denied and dismissed with prejudice.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Seibert's April 30, 2008, Report And Recommendation have been filed by the parties and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Seibert's April 30, 2008, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on April 30, 2008, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Respondent's Motion To Dismiss (Docket No. 13) be, and the same is hereby, **GRANTED**. It is further

¹The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

ORDERED that the Petitioner's Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED** and **DISMISSED**, **with prejudice**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: October 21 , 2008

 /S/ Robert E. Maxwell

United States District Judge